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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,887	11/15/2000	Barry Jay Weber	RCA90,206	5241
24498	7590	11/21/2007		
THOMSON LICENSING LLC			EXAMINER	
Two Independence Way			LAZARO, DAVID R	
Suite 200				
PRINCETON, NJ 08540			ART UNIT	PAPER NUMBER
			2155	
			MAIL DATE	DELIVERY MODE
			11/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/712,887

Applicant(s)

WEBER ET AL.

Examiner

David Lazaro

Art Unit

2155

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4-16 and 26.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


David Lazaro
November 19, 2007

Continuation Sheet for Advisory Action

11. Continued

Applicant argues - *"First of all, it is unclear what the Examiner means by radio and television commercial programming coming from multiple services and how the Examiner correlates, or otherwise characterizes, "multiple services" as being the same or remotely similar to the claim language of advertisements from multiple sources. In other words, there seems to be no logical connection, much less grammatical similarity, between "multiple services" and "multiple sources." The Examiner should provide clarification in this regard."*

Examiner's response - The examiner intended multiple services to mean multiple sources.

Applicant argues - *"In the case at bar, the Examiner's finding that it would be inherent to have multiple advertising sources based on the teachings of Monteiro is merely conclusory and speculative, and the Examiner has offered no evidence or basis-in-fact to support the purported "inherent" teachings of Monteiro..."*

Examiner's response - Applicant has misconstrued the Examiner's explanation of the cited teaching Monteiro and statements in the Response to Arguments of the 08/31/2007 office action. Particularly, it is noted that inherency is not applied to the entire limitation. The inherency is specifically directed to the advertisements being pre-cached at the control server. Col. 4 lines 43-54 indicate specifically that the advertisements are located at the control server. This is an explicit fact. Clearly the advertisements had to arrive there in some manner. In other words, it is inherent that the advertisements were received by the control server in some manner. The examiner considers this to be pre-caching at the control server.

In relation to the multiple sources, the examiner does not rely on inherency but anticipation by one of ordinary skill in the art. Particularly, Col. 1 lines 11-15, states specifically that the system provides services akin to radio or television with commercial programming content adjusted based on the individual user. One of ordinary skill in the art would have an understanding of radio or television services, which include an understanding that commercial programming in these services may come from multiple sources. Such an understanding leads to an anticipation that the system of Monteiro is intended to include multiple sources for the "paid commercial messages". Again, this is not a statement that multiple sources are inherent, but that multiple sources would be recognized by one of ordinary skill in the art and therefore anticipated by Monteiro.

Applicant argues - *"Col. 7, lines 60-65 of Monteiro teaches nothing more than a general teaching that advertising may be incorporated into an audio stream within a network control center. From these teachings, the basis for the Examiner's finding that Monteiro teach a multiplexer that operable to provide multiple users with individualized composite program datastream, is wholly unclear. In fact, the Examiner should note that the term "multiplexer" or "multiplex" is not even included in the disclosure of Monteiro. Applicants find nothing in Monteiro that teaches or suggests a multiplexer, very much less a multiplexer that is configured to operate in the manner claimed in claim 13."*

Examiner's response - While Monteiro may not explicitly state "multiplexer" or "multiplex", the important question is whether Monteiro teaches the elements of the claimed multiplexer. In reviewing the claim language, a multiplexer as defined by the claim is "operable to provide multiple users with individualized composite program datastream". The claim language further defines providing users with individualized

composite datastreams by “performing in parallel for multiple users; insertion of a designated advertisement...” and “coupling of said composite program datastream to a corresponding user of the multiple users.”

So essentially the scope of the claimed “multiplexer” is defined by the insertion and coupling steps performed in parallel for multiple users. The examiner asserts that both such steps are taught by Monteiro. Particularly, insertion of a designated advertisement into selected multimedia program content is described at Col. 7, lines 60-65, as occurring at any number of points including the control center, media server and user level. The scheduling of such insertions is described in Col. 4 lines 32-35 and col. 16 lines 29-40. Once the advertisement is inserted into the programming, a composite program datastream is formed. The composite program datastream is further coupled to each individual user through the multicast/unicast system such as described in Col. 5, line 65 to Col. 6, line 5. These steps are performed for all the members (ie users) of a channel and further for each given channel (Col. 5 lines 57-64 and Col. 1 lines 1-7).

As such, a multiplexer, as defined by the claims, is taught by Monteiro. The examiner notes that while applicant’s remarks emphasized the “individualized program datastream”, the claimed steps for providing such an individualized program stream do not indicate any specific steps for tailoring a program stream to an individual user. Even considering such elements, Monteiro includes embodiments specific to providing individually targeted programming (Col. 9 lines 12-24). The overall purpose of the system of Monteiro is directed towards providing commercial programming content tailored to individual (see abstract and col. 1 lines 5-15).

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13. Continued:

The claims remain rejected based on the grounds of rejection presented in the 08/31/2007 office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lazaro whose telephone number is 571-272-3986. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David Lazaro
November 19, 2007



PHILIP TRAN
PRIMARY EXAMINER